

No. 87-1187

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Supreme Court, U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1987

ALCEE L. HASTINGS, JUDGE,
UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA, PETITIONER

v.

JUDICIAL CONFERENCE OF THE UNITED STATES, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**BRIEF FOR THE UNITED STATES
IN OPPOSITION**

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QUESTION PRESENTED

Whether the court of appeals correctly rejected various challenges, based primarily on separation-of-powers and due process principles, to the proceedings that have resulted in the Judicial Conference of the United States certifying to the House of Representatives, pursuant to 28 U.S.C. 372(c)(8), its conclusion that consideration of impeachment may be warranted because petitioner conspired to solicit a bribe and obstructed justice to avoid conviction.



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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-85) is reported at 829 F.2d 91. The opinion of the district court (Pet. App. 86-96) is reported at 657 F.Supp. 672.

JURISDICTION

The judgment of the court of appeals (Pet. App. 98-99) was entered on September 15, 1987. On December 16,

¹ In addition to the United States, this brief is filed on behalf of the Judicial Conference of the United States, the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders, and the Chief Justice of the United States. The Eleventh Circuit's judicial council and the five judges who composed the committee that investigated petitioner and reported to the judicial counsel are also respondents.

1987, the time for filing a petition for a writ of certiorari was extended by order of Justice Brennan to January 13, 1988, and a petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress adopted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 Act (codified at 28 U.S.C. 331, 332, 372(c), 604(h); *reprinted in* Pet. App. 106-132) in order to provide a means for the federal judiciary to exercise supervisory control over the administration of its own affairs. Congress believed that the new system, which in large part mirrors that previously adopted by the Judicial Conference of the United States and various circuit judicial councils (see *Judicial Tenure and Discipline—1979-1980: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary*, 96th Cong., 1st & 2d Sess. 63 (1979-1980)), would enable Article III judges to “put their own house in order” (*Chandler v. Judicial Council*, 398 U.S. 74, 85 (1970)) and thereby reinforce the integrity of the judicial system.

Under the Act, any person may file a complaint with the clerk of a court of appeals alleging that a judge or a magistrate in the circuit either “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts” or “is unable to discharge all the duties of office by reason of mental or physical disability” (28 U.S.C. 372(c)(1)). If the chief judge of the circuit finds that the complaint is “frivolous,” that it is “directly related to the merits of a decision or procedural ruling,” or that the matter prompting the complaint has already been resolved, he may issue a written order terminating the proceeding (28 U.S.C. 372(c)(3)). Otherwise the chief judge is

directed to empanel a special committee, composed of "himself and equal numbers of circuit and district judges of the circuit," to conduct an investigation "as extensive as it considers necessary" into the matters raised in the complaint (28 U.S.C. 372(c)(4)-(5)). The committee is required to give notice to the judge or magistrate whose conduct is the subject of the complaint (28 U.S.C. 372(c)(11)(A)), who then has the right to appear before the committee in person or by counsel, present oral and documentary evidence, compel the attendance of witnesses and the production of documents, and cross-examine adverse witnesses (28 U.S.C. 372(c)(11)(B)).

After concluding its investigation, the committee is required to file a report with the circuit's judicial council (28 U.S.C. 372(c)(5)), which may choose to conduct a further investigation (28 U.S.C. 372(c)(6)(A)). The Act provides that upon consideration of the committee's report or the conclusion of any subsequent investigation, the judicial council may censure the judge privately or publicly, may direct that no further cases be assigned to the judge for a temporary period, may ask the judge to retire voluntarily, may certify the judge's disability, or may take such other action as it considers appropriate (28 U.S.C. 372(c)(6)(B)). The Act specifically precludes removal from office of "any judge appointed to hold office during good behavior" (28 U.S.C. 372(c)(6)(B)(vii)) and includes no provision that would authorize diminution of a judge's salary. If the judicial council determines that an Article III judge has engaged in conduct "which might constitute one or more grounds for impeachment," the council is required to certify that determination to the Judicial Conference of the United States (28 U.S.C. 372(c)(7)(A)-(B)), but the Act does not require the council to undertake to make such a determination.

Like the circuit judicial council, the Judicial Conference is empowered to conduct an additional investigation.² The Judicial Conference is authorized to impose the same sanctions available to the judicial council (28 U.S.C. 372(c)(8)). If the Judicial Conference "concurs in the determination of the council, or makes its own determination, that consideration of impeachment may be warranted," it is required to certify and transmit that determination and the record of proceedings to the House of Representatives (*ibid.*).

2. Petitioner is a United States District Judge for the Southern District of Florida. In March 1983, two district court judges filed a complaint against petitioner under 28 U.S.C. 372(c) alleging that he had engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts and that he had violated several canons of the Code of Judicial Conduct (see Pet. App. 13-14 & n.12). The complaint specifically referred to an indictment filed in 1981 charging petitioner with conspiring with an attorney to obtain a bribe, on which petitioner had been acquitted. See *United States v. Hastings*, 681 F.2d 706 (11th Cir. 1982), cert. denied, 459 U.S. 1203 (1983) (holding that the Impeachment Clause does not bar indictment of a sitting federal judge); *United States v. Borders*, 693 F.2d 1318 (11th Cir. 1982), cert. denied, 461 U.S. 905 (1983) (upholding conviction of petitioner's alleged co-conspirator). As provided by the Act, the Chief Judge of the Eleventh Circuit issued an order appointing himself and four other judges to a committee to investi-

² The Judicial Conference is authorized by 28 U.S.C. 331 to exercise the authority provided in 28 U.S.C. 372(c) through a standing committee. The Conference has established a Committee to Review Circuit Council Conduct and Disability Orders to exercise its responsibilities to review council orders issued under 28 U.S.C. 372(c)(6).

gate the allegations in the complaint. In June 1983, the committee petitioned for access to the records of the grand jury that had indicted petitioner. The petition was granted over petitioner's objections. *In re Petition to Inspect & Copy Grand Jury Materials*, 576 F. Supp. 1275 (S.D. Fla. 1983), *aff'd*, 735 F.2d 1261 (11th Cir.), *cert. denied*, 469 U.S. 884 (1984).

Petitioner then brought suit in the United States District Court for the District of Columbia to enjoin the committee from proceeding with its investigation. He asserted in part that the Act violated separation-of-powers principles by authorizing judicial councils to investigate and discipline judges, thereby undermining the independence of the judiciary, and that the Act on its face violated various due process guarantees. The district court dismissed petitioner's claims, holding that the Act is constitutional on its face. *Hastings v. Judicial Conference*, 593 F. Supp. 1371 (D.D.C. 1984). On appeal, the District of Columbia Circuit affirmed the dismissal of petitioner's constitutional challenges, but did so on ripeness grounds. *Hastings v. Judicial Conference*, 770 F.2d 1093 (D.C. Cir. 1985). The court ruled that it would be premature to pass judgment on the constitutionality of the procedures created by the Act when those procedures for the most part had yet to be invoked against petitioner and ultimately might never be invoked (*id.* at 1099-1103).

At the same time that petitioner was contesting the constitutionality of the Act in the District of Columbia, related litigation was taking place in the Eleventh Circuit. In May 1985, the investigating committee directed that subpoenas be served on petitioner's secretary and on several of his then-current and former law clerks. The subpoenaed witnesses resisted enforcement of the subpoenas and petitioner sought to enjoin their enforcement. A specially designated panel of the Eleventh Circuit

(all of the active judges having recused themselves) authorized enforcement of the subpoenas. *Williams v. Mercer (In re Certain Complaints Under Investigation by an Investigating Comm. of the Judicial Council of the Eleventh Circuit)*, 783 F.2d 1488 (11th Cir. 1986). After concluding that the parties had standing to raise constitutional arguments "going to the existence and investigatory authority of the Committee" (*id.* at 1502), it rejected the separation-of-powers claim that the Act improperly assigns executive functions to Article III judges by authorizing them to investigate fellow judges charged with misconduct, thereby undermining the independence of the judiciary.

Petitioner filed petitions for writs of certiorari seeking review of both the District of Columbia Circuit's decision and the Eleventh Circuit's decision. Both petitions contended that the Act's mechanisms for investigating and disciplining Article III judges offend separation-of-powers principles. No. 85-1301 (Question 2); No. 85-1609 (Question 3). The petitions were denied on June 23, 1986. 477 U.S. 904.

3. In August 1986, the committee investigating petitioner presented its report to the Eleventh Circuit's judicial council, recommending that the council determine and certify to the Judicial Conference that consideration of impeachment may be warranted. The judicial council subsequently presented the Judicial Conference with its own report, which concluded that petitioner has "engaged in conduct which might constitute one or more grounds for impeachment" by participating in a conspiracy to solicit a bribe and engaging in obstruction of justice in order to avoid conviction. Pet. App. 19.

Petitioner, meanwhile, filed the present suit in the United States District Court for the District of Columbia, renewing his challenges to the constitutionality of the Act.

The district court dismissed petitioner's complaint (Pet. App. 86-96). It ruled that all but one of petitioner's claims either were not ripe or were barred by prior judgments (*id.* at 89-92). The remaining claim was petitioner's contention that the Act violates separation-of-powers principles by authorizing the Judicial Conference to certify its determination that impeachment may be warranted to the House of Representatives. The court concluded that that contention, which is narrower than the argument rejected by the Eleventh Circuit that the Act violates separation-of-powers principles by assigning executive functions to Article III judges, was ripe since the judicial council had recommended that the Judicial Conference certify that impeachment may be warranted. The Court rejected petitioner's contention that the certification provision unconstitutionally delegates Congress's power of impeachment, explaining that a certified determination that impeachment may be warranted is "merely informational, nothing more, to be granted only such weight as Congress in its wisdom wishes" and that Congress "completely control[s] all aspects of any impeachment process" (*id.* at 93).

In March 1987, while appeal was pending in the District of Columbia Circuit, the Judicial Conference certified to the House of Representatives that it concurred in the judicial council's determination that consideration of impeachment may be warranted. Neither the judicial council nor the Judicial Conference has taken any disciplinary action toward petitioner.

4. The court of appeals affirmed the district court's judgment with respect to most of petitioner's claims and remanded several claims to the district court for further proceedings (Pet. App. 1-85). In affirming the dismissal of petitioner's principal claims, the court of appeals declined to give the Eleventh Circuit's prior judgment the broad preclusive effect accorded it by the district court. The

court of appeals ruled that the only claim precluded by the Eleventh Circuit's decision was petitioner's separation-of-powers challenge to the investigatory authority vested in the judiciary by the Act, a claim which had been directly and necessarily resolved by the Eleventh Circuit. Noting that petitioner "does not really deny that his broad claims relating to the investigatory process prescribed by the Act were decided," the court of appeals found no basis for permitting petitioner to relitigate that issue (*id.* at 33-38).

With respect to petitioner's other arguments, the court of appeals first rejected petitioner's separation-of-powers challenge to the Act's provisions for certifying possible impeachable conduct to the House of Representatives. Although the court of appeals thought that a significant constitutional question might arise if the Act compelled the judiciary to determine whether impeachable conduct had occurred, the court found that "both determination and therefore certification by both the councils and the Conference [are] entirely discretionary" under the Act (Pet. App. 41). The court of appeals concluded that if the Judicial Conference chose to exercise its discretion to make a determination that impeachment might be warranted in a particular case, the statutory requirement that such a determination be certified to the House of Representatives "is without independent constitutional significance" (*id.* at 45). While the House of Representatives might choose to give weight to the Judicial Conference's determination, the court of appeals noted that it might also give weight to representations of possible impeachable conduct made by other persons and concluded that any difference in the weight accorded the Judicial Conference's determination does not render the certification provision unconstitutional (*id.* at 46-47).³

³ Judge Buckley, while agreeing that the Act does not require either a judicial council or the Judicial Conference to determine whether an

The court of appeals next rejected as premature petitioner's claim that the Act violates the Compensation Clause because it does not require the payment of his legal fees. The court explained that the Act authorizes the Director of the Administrative Office of the United States Courts to "pay necessary expenses incurred by the judicial councils of the circuits and the Judicial Conference" in proceedings under the Act (28 U.S.C. 604(h)(1)). Although the Director had previously told petitioner that he has no authority to reimburse petitioner's legal expenses based solely on petitioner's own request, petitioner had not applied to the judicial council or the Judicial Conference for a determination whether his legal expenses constitute a "necessary expense[] incurred by the judicial council[] * * * and the Judicial Conference." The court of appeals reasoned that petitioner should give the judicial council and the Judicial Conference an opportunity to consider his request for fees before ruling on the matter (Pet. App. 48-50).

The court of appeals then turned to petitioner's facial due process challenges to the Act. Relying on *Withrow v. Larkin*, 421 U.S. 35 (1975), the court concluded that the combination of investigative and adjudicatory functions vested in the judicial councils and the Judicial Conference by the Act is not inherently impermissible (Pet. App. 51-56). The court declined to reach the merits of petitioner's claim that the Act violates due process by not

impeachable offense may have been committed, suggested in a separate opinion that petitioner's constitutional challenge to the certification procedures was nonetheless not "entirely frivolous" (Pet. App. 78-84). Judge Buckley emphasized, however, that he "ha[d] reached no conclusion as to whether the certification requirement represents * * * an unconstitutional encroachment on an independent branch of the federal government" (*id.* at 84). In all other respects, Judge Buckley concurred in the court's disposition of the appeal.

requiring the judicial councils and the Judicial Conference to allow accused judges to appear and challenge adverse evidence. It explained that petitioner had not asserted that he was denied the right to appear and challenge adverse evidence in his own proceedings and that "it makes no sense for a court to strike down a statute that has in fact been applied in a constitutional manner" (*id.* at 57-59).

The court of appeals next rejected petitioner's claims that the Act's prohibition of "conduct prejudicial to the effective and expeditious administration of the business of the courts" (28 U.S.C. 372(c)(1)) is unconstitutionally vague and overbroad. The court held that the vagueness claim fails because the charges that petitioner conspired to solicit a bribe and obstructed justice are clearly within the intendment of the statutory language, and "[o]ne to whose conduct a statute clearly applies may not successfully challenge it for vagueness." Pet. App. 65-66 (quoting *Parker v. Levy*, 417 U.S. 733, 756 (1974)). With respect to the overbreadth claim, the court pointed out that the Act by its terms is directed at judicial misconduct rather than protected First Amendment activities, and the Act's legislative history clarifies that the Act is not aimed at protected speech (Pet. App. 61-64). Relying on *Broadrick v. Oklahoma*, 413 U.S. 601 (1973), the court concluded that the Act is not invalid on overbreadth grounds because it does not reach a substantial amount of constitutionally protected activity and any incidental overbreadth is "clearly outweighed by the legitimate and important objective of the Act," particularly given the lack of a practical alternative to the Act's general standard (Pet. App. 64-65).

Having disposed of these claims, the court of appeals remanded the case for the district court to consider three specific constitutional challenges to the manner in which the proceedings concerning petitioner had been con-

ducted: that one of the judges serving on the investigating committee had displayed bias; that the judicial council had not independently reviewed the evidence assembled by the committee; and that the judicial council improperly required petitioner to travel from Miami to Atlanta to examine the committee's report (Pet. App. 66-69). The district court subsequently granted an unopposed motion by petitioner to stay proceedings on remand pending the disposition of the present petition for a writ of certiorari.

The House of Representatives has not yet determined whether to impeach petitioner.

ARGUMENT

- Except in passing, petitioner has not addressed the substance of the court of appeals' decision. He has made little attempt to show that the decision is incorrect or that the rulings of the court of appeals otherwise merit review by this Court. The fact that petitioner offers virtually no arguments directed specifically at the decision below is, in itself, sufficient reason for denying this latest petition. In any event, the decision below is fully consistent with this Court's decisions and is not in conflict with the decisions of any other court. In a number of respects, moreover, the decision turns on the particular facts of this case and has no broader legal significance. For these reasons, review by this Court is not warranted.

1. Petitioner's first two questions presented concern his broad separation-of-powers argument that the entire scheme of the Act is unconstitutional because it assigns executive functions to Article III judges, thereby undermining judicial independence. The court below properly concluded that this issue was settled by the Eleventh Circuit in its decision that this Court previously declined to review (Pet. App. 33-38). Petitioner is accordingly precluded

from raising the argument again. Moreover, any claim that the court of appeals erred in finding that he is barred from making his broad separation-of-powers argument — and petitioner has not presented any reason why the court erred — would involve nothing more than the application of settled principles of issue preclusion to the facts of this case, so that review of such a claim would not be warranted.

In any event, petitioner's broad argument, which is premised on the claim that the investigatory powers granted under the Act will undermine the independence of the judiciary, lacks merit for the reasons given by the Eleventh Circuit (783 F.2d at 1503-1510) and summarized in the oppositions to the petition for a writ of certiorari filed in that proceeding. As this Court stated in *Chandler v. Judicial Council*, 398 U.S. 74 (1970), there should be some mechanism short of impeachment to discipline judges whose conduct is prejudicial to the " 'effective and expeditious administration of the business of the courts' " (*id.* at 86 n.7). The Act is designed to perform this function, while recognizing that the mechanism that is least likely to intrude on the independence of the judiciary is one supervised by the judiciary itself. Moreover, while allowing the judiciary to " 'put [its] own house in order' " (*id.* at 85), the Act expressly prohibits interference with individual cases since complaints "directly related to the merits of a decision or procedural ruling" must be dismissed (28 U.S.C. 372(c)(3)).

2. Petitioner's third question presented raises his narrower separation-of-powers argument that the Act is unconstitutional because it authorizes the judicial councils and the Judicial Conference to determine and certify that impeachment may be warranted. The court of appeals correctly rejected that claim. As the court of appeals recognized (Pet. App. 41-44), the Act does not purport to

compel either the judicial councils or the Judicial Conference to determine whether impeachable conduct has occurred. It merely requires the certification of such a determination *if* the determination is made. As a result, it is unnecessary to decide (and the court of appeals did not decide) whether constitutional principles would preclude Congress from requiring such a determination. And, as the court of appeals concluded (*id.* at 45), it hardly can be constitutionally infirm for Congress to call on the judiciary to notify it formally of such a determination if it is made.

Given the discretionary character of the judicial inquiry, the only real separation-of-powers question is whether the making of such a determination by members of the judiciary impermissibly delegates the House of Representatives' exclusive power of impeachment. The courts below, like the Eleventh Circuit, correctly concluded that it does not.⁴ As the district court stated (Pet. App. 93), whether the House chooses to give weight to such a determination, and, if so, how much weight it decides to give, depends entirely on the free choice of the members of the House; the House is not bound, legally or otherwise, to accept the judiciary's conclusions concerning whether petitioner or any other judge ought to be impeached. Further-

⁴ The Eleventh Circuit concluded that the Act "does not intrude upon the House's sole power of decision whether or not to impeach" by authorizing the judiciary to investigate the conduct of Article III judges and make determinations concerning whether such conduct may warrant consideration of impeachment (783 F.2d at 1510-1512). The court of appeals in this case declined to give preclusive effect to the Eleventh Circuit's decision in this regard, not because it disagreed with the Eleventh Circuit's reasoning, but because "it was by no means essential for [the Eleventh Circuit] to decide this constitutional issue in order to determine whether the subpoenas [at issue in that case] were valid" (Pet. App. 32).

more, the Judicial Conference is authorized to determine (and has determined in this case) only that consideration of impeachment *may* be warranted, not that the judge under investigation in fact should be impeached (28 U.S.C. 372(c)(8)). Accordingly, even if the House of Representatives regarded itself as somehow bound by the Judicial Conference's determination, it would be binding itself only to consider impeachment, not to impeach (see 783 F.2d at 1512). Thus, a determination of the kind made regarding petitioner simply does not trench upon the power of Congress over the impeachment process.

3. Petitioner's fourth question presented challenges other aspects of the court of appeals' decision. The court did not err in its treatment of these other arguments and, in any event, its decisions on those matters plainly do not warrant review by this Court.

As the court below concluded, petitioner's due process challenge to the combined exercise of investigatory and adjudicatory functions by the judicial councils and the Judicial Conference is foreclosed by *Withrow v. Larkin*, 421 U.S. 35 (1975). The Court there held unanimously that a state statute requiring a medical board both to investigate charges of misconduct and to determine whether to impose disciplinary measures does not violate due process. In so holding, the Court rejected the proposition that "the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication" (*id.* at 47). The Court reasoned that "[t]he mere exposure to evidence presented in nonadversary investigative procedures is insufficient in itself to impugn the fairness of the Board members at a later adversary hearing" (*id.* at 55). Accord, *Richardson v. Perales*, 402 U.S. 389, 410 (1971); *FTC v. Cement Institute*, 333 U.S. 683, 700-703 (1948). In light of *Withrow*, the bare fact that the judicial councils and the Judicial

Conference may exercise investigatory functions prior to determining whether impeachment may be warranted does not create an impermissible risk of bias.⁵

Petitioner's vagueness and overbreadth challenges to the Act are likewise controlled by prior decisions of this Court. With respect to vagueness, it long has been settled that "[o]ne to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy*, 417 U.S. 733, 756 (1974); accord *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982); *Broadrick v. Oklahoma*, 413 U.S. 601, 608-609 (1973). In this case, the alleged conduct at the heart of the proceedings concerning petitioner—conspiracy to solicit a bribe and obstruction of justice—self-evidently constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts" (28 U.S.C. 372(c)(1)). Thus, even if it is assumed that the statutory standard might be impermissibly vague as applied to the hypothetical conduct of other judges, the court of appeals acted correctly in this case in declining to invalidate the Act on vagueness grounds.⁶

⁵ It is open to serious question, moreover, whether the determination that impeachment may be warranted constitutes an adjudication of a judge's rights and liabilities in the first instance. The Eleventh Circuit, responding to the same due process claim, concluded that "[t]o the extent a judicial council under the Act engages merely in fact-gathering * * * and certifying the possible existence of grounds for impeachment, it does not 'adjudicate' the accused judge's rights and liabilities" (783 F.2d at 1514).

⁶ The Eleventh Circuit, while declining formally to decide the vagueness question for reasons of standing, stated that "the Act's standard * * * describes with adequate explicitness the judicial conduct that may be investigated" and that "with the possible exception of certain marginal cases, a judge can reasonably be expected to understand whether or not contemplated conduct will fall within the Act"

As for the overbreadth claim, "particularly where conduct and not merely speech is involved, * * * the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick*, 413 U.S. at 615. Unless "the enactment reaches a substantial amount of constitutionally protected conduct * * * the overbreadth challenge must fail." *Village of Hoffman Estates*, 455 U.S. at 494. In this case, both the language of the Act and its legislative history demonstrate that Congress did not intend the Act's prohibitions to extend to protected First Amendment speech. See S. Rep. 96-362, 96th Cong., 1st Sess. 9 (1979). As a result, the Act does not even arguably reach a substantial amount of constitutionally protected conduct and any incidental application that the Act might have to protected speech can hardly be deemed substantial in relation to the statute's plainly legitimate sweep. This Court properly can defer consideration of hypothetical speech-related applications of the Act until the time, if ever, when the Act is applied in a way that penalizes potentially protected activity.⁷

The court of appeals disposed of petitioner's remaining claims—those concerning the Compensation Clause, the

(783 F.2d at 1513 n.22). As the Eleventh Circuit noted, in addition to the guidance provided by the language of the Act itself, Congress made clear in the Act's legislative history that it intended the Act's standard to be informed by more specific guidelines set forth in the Code of Judicial Conduct, resolutions of the Judicial Conference concerning judicial conduct, and other congressional enactments governing judicial conduct (*ibid.*; see also Pet. App. 63).

⁷ The court of appeals' conclusions regarding petitioner's overbreadth claim are identical to those of the Eleventh Circuit. As the Eleventh Circuit noted, any First Amendment questions that might be raised by "marginal applications" of the Act "can be effectively dealt with by case-by-case analysis" (783 F.2d at 1513 & n.22).

adequacy of the Act's appearance and confrontation provisions, and petitioner's specific allegations of procedural unfairness in the judicial council's proceedings—without reaching their merits. Its disposition of those claims was correct for the reasons given by the court (Pet. App. 48-50, 57-59, 67-69). Equally important, the disposition of those issues involved nothing more than the application of settled legal rules to the particular facts of this case, so that review by this Court is not warranted.

Finally, while largely ignoring the specific rulings of the court of appeals in this case, petitioner offers the general complaint (Pet. 30-35) that none of the courts before which he has litigated has simultaneously addressed all of his manifold constitutional challenges to the Act. However, in each instance in which a court has declined to reach one or more of petitioner's claims, it has done so because the claims were not then presented in a sufficiently concrete or adversarial form to warrant their adjudication. This does not mean that petitioner has been denied the opportunity to litigate his many claims; to the contrary, the courts now have resolved the great majority of them. That the courts have waited for the claims to be presented in concrete form simply reflects the principle that "under our constitutional system courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws. Constitutional judgments * * * are justified only out of the necessity of adjudicating rights in particular cases between the litigants before the Court[s]." *Broadrick*, 413 U.S. at 610-611 (citation omitted). Moreover, although the court below considered petitioner's claim that "the whole of the Act is, in essence, more unconstitutional than the sum of its parts" (Pet. App. 34), it concluded that there was no merit to that claim (*id.* at 35), and petitioner has provided no reason why that conclusion is erroneous.

CONCLUSION

The petition for writ of certiorari should be denied.
Respectfully submitted.

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MARCH 1988

